TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 509.

CARLOS ARMSTRONG, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 15, 1900.

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

No. 509.

CARLOS ARMSTRONG, APPELLANT, vs. THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

In the Court of Claims.

CARLOS ARMSTRONG
vs.
THE UNITED STATES OF AMERICA. } No. 21791.

I.—*Petition.*

On the 31st day of March, 1900, the claimant filed his original petition.

On the 13th day of November, 1900, the claimant, by leave of court, filed an amended petition, which is as follows:

Amended petition. Filed November 13, 1900.

I. The petitioner, Carlos Armstrong, by leave of the court first had and obtained, amends his original petition herein and says that by mistake of his attorney-in-fact it was alleged in the said original petition that he (this petitioner) was a citizen of the United States, whereas in truth the petitioner was at the time said petition was filed, and is now, and was at all the times hereafter stated, a subject of the Queen of Great Britain, being a native of England and never having renounced or forfeited his allegiance to the Sovereign of that Kingdom; and he says that by the common law of Great Britain, and by the act of 23 and 24 Victoria, July 3, 1860, citizens of the United States of America had, when the petition was filed herein, and now have, the right to institute and prosecute suit—in the form of a petition of right—against the Government thereof for the recovery of money due, or other thing wrongfully withheld, and that in such proceedings judgments may be rendered as in other cases according to the nature and extent of the relief to which the suitor is entitled at law or in equity.

II. He says that all the times hereinafter mentioned he was a merchant doing business as such at Ponce, in the island of Porto Rico, and that in the course of his business as such merchant, and for the purpose of carrying on his said business, the petitioner imported directly from other ports of the United States Government into said Porto Rico articles and merchandise of the "growth, produce, or manufacture of the United States, or which if grown, produced, or manufactured in other countries had been regularly entered in ports of entry" of the United States and lawful duties paid thereon.

III. That prior to the twelfth day of August, 1898, a state of war existed between the Kingdom of Spain and the United States of

America, and prior to said date the said island of Porto Rico belonged to the Kingdom of Spain as a colonial possession thereof, and had been for a long time prior to said date under the sovereignty of the Kingdom of Spain, which had there established a civil government with the proper civil and municipal authorities, and the said Government had enacted, among other laws, certain tariff or customs duties upon imports into the island of Porto Rico from the United States and other countries, and such Spanish or Porto Rican tariff or customs laws were in force at the time of the seizure and occupation of the said island by the military and naval forces of the United States in the month of July, 1898.

IV. That on the twelfth day of August, 1898, a protocol, providing for the cession of the island of Porto Rico to the United States for a treaty of peace between the Kingdom of Spain and the United States of America and for the cession of the island of Porto Rico to the United States, was duly signed by the representatives of both Governments, and thereafter and on the tenth day of December, 1898, the treaty of peace was entered into and duly signed by the duly authorized representatives of both Governments, and thereafter and on the sixth day of February, 1899, the said treaty of peace was duly ratified by the Senate of the United States of America, and was thereafter ratified by the Queen Regent of Spain on the nineteenth day of March, 1899, and by the Spanish Cortes, and ratifications thereof were exchanged at the city of Washington, in the District of Columbia, on the eleventh day of April, 1899, and on the same day proclaimed by the President of the United States of America.

V. That prior to the signing of the said protocol and in the month of July, 1898, after the first landing of the military forces of the United States upon the island of Porto Rico, there were a few skirmishes between the United States forces and the Spanish forces stationed on said island, but that all hostilities of every kind ceased from and after the twelfth day of August, 1898, the date of the signing of the protocol as aforesaid, and from that date down to the present time there have been no hostilities of any kind upon said island and no military operations of any kind have been conducted by the United States forces against the Spanish forces or against any other hostile forces on said island, but that immediately upon the signing of said protocol and as therein provided the said island was abandoned by Spain and her possession and sovereignty thereof relinquished and all the Spanish naval and military forces were immediately withdrawn and the said island was evacuated and all public property on said island was delivered to and taken possession of by the United States under the said protocol, and said island has ever since been and now is in the peaceable possession and under the sovereignty of the United States; and since the twelfth day of August, 1898, the said island has been and now is in a condition of peace and the inhabitants thereof have been in the enjoyment of civil rights, except as such rights have been affected by certain orders of the President and of the War Department and of the military forces of the United States, more particularly the orders for the collection of duties herein referred to.

VI. That under the terms of a certain proclamation of Major-General Miles, commanding the United States military forces in Porto Rico, the former Spanish and Porto Rican customs and tariff laws were continued in operation and duties upon imports into the said island from the United States were collected thereunder in that part of the island

then occupied by the military forces of the United States from the twenty-sixth day of July, 1898, until the 19th day of August, 1898.

VII. That on the nineteenth day of August, 1898, the customs tariff and regulations for ports in Porto Rico in possession of the United States, *was* promulgated by an order of the President of the United States and duties were collected thereunder until the first day of February, 1899.

VIII. That on the first day of February, 1899, the amended customs tariff and regulations for ports in Porto Rico *was* promulgated by an order of the President of the United States, as a tariff fixing and providing for the collection of duties upon imports into Porto Rico from all the ports of the United States as well as from foreign countries, and thereafter duties were collected under the said amended customs tariff and regulations and the amendments thereof made from time to time by order of the President of the United States.

IX. That during the period above mentioned, to wit, from the twelfth day of August, 1898, until the fifth day of December, 1899, the imposition and collection of customs duties upon all imports into the island of Porto Rico from the various ports of the United States, including the imports of the petitioner from the ports of New York, Baltimore, and Philadelphia, and upon all exports from the said ports of the United States, including the goods exported to your petitioners from the ports aforesaid to the island of Porto Rico, were in fact made and enforced, levied and collected by the War Department and by the military forces of the United States, and that no part of said customs duties collected during the period from August 12, 1898, to December 5, 1899, under the said Spanish tariff and under the proclamation of Major-General Miles and under the customs tariff and regulations and amended customs tariff and regulations, was levied or collected by the Treasury Department of the United States, or by any of the civil authorities of the United States.

X. That all the duties so collected by the War Department and military authorities of the United States, including the duties paid by your petitioners upon the imports into Porto Rico from the United States and exports from the United States into Porto Rico, are now in the possession of and held by the United States of America.

XI. That between the said dates of August 12, 1898, and December 5, 1899, the petitioner, in conducting his business as aforesaid, and, in order to carry on his said business, purchased in other ports of the United States, to wit: New York, Baltimore, and Philadelphia, and ordered, on consignment from said ports, certain goods, wares, and merchandise, necessary in his said business, which said goods, wares, and merchandise were the "growth, produce, or manufacture of the United States," or if of the "growth, produce, or manufacture of a foreign country" had been duly entered and lawful duty paid thereon in some one of the other ports of entry of the United States, which said goods, wares, and merchandise, so purchased or consigned, were shipped directly to the port of Ponce, Porto Rico, from said other ports of the United States. That on the arrival of said goods, wares, and merchandise in the port of Ponce, Porto Rico, the same were regularly entered by the petitioner as required by the military officers of the United States, and by the customs regulations made by the President, and were taken into possession and custody of the United States, and on such portions thereof as were received prior to February 1, 1899, duties and taxes were charged and collected under orders

promulgated by the President of the United States, and on such portions thereof as were received after February 1, 1899, duties and taxes were charged in accordance with a certain amended order, rules, regutions and schedules accompanying the same made and issued by the President of the United States, dated January 20, 1899, and promulgated through the War Department—to all which orders, rules, and regulations and schedules, petitioner begs leave to refer on the trial hereof; that the surrender and delivery of said goods, wares, and merchandise were refused the petitioner by the officers and agents of the United States unless and until he should pay the aforesaid duties and taxes thereon.

XII. That said officers and agents of the United States demanded and collected of the petitioner, against his protest and over his objection, duties and taxes on said goods, wares, and merchandise as aforesaid, and petitioner, in order to obtain his said goods, wares, and merchandise, and continue to carry on his business, was compelled to, and did, pay duties and taxes as aforesaid to said officers and agents at the port of entry of Ponce, Porto Rico, at the dates, and for the goods, wares, and merchandise, and in the several sums set out in annexed schedules, marked "Schedule A," made part hereof, aggregating a total sum of $31,530.65, lawful money of the United States, and which said money was received into the Treasury of the United States.

XIII. The petitioner further alleges that, as he is informed by counsel, the imposition and collection of the duties aforesaid were in violation of the rights and privileges secured to the petitioner under the Constitution and laws of the United States of America, and that the imposition and collection of such duties are in violation of the treaty of peace between the United States and Spain hereinbefore referred to and of the Constitution of the United States.

XIV. And the petitioner further shows that no part of the said duties paid under protest as aforesaid has ever been repaid to *them* by the United States, although payment thereof has been demanded. And by reason of the facts aforesaid, the sum of $31,530.65 was, and is now, due and owing to the petitioner from the United States.

Wherefore petitioner demands judgment against the United States for the sum of thirty-one thousand five hundred and thirty dollars and sixty-five cents ($31,530.65) with interest and costs.

JOHN C. CHANEY,
Attorney of Record for Claimant.

JOHN G. CARLISLE, *Of Counsel.*

CITY OF WASHINGTON, *District of Columbia*, ss:

John G. Carlisle, being first duly sworn, deposes and says: That he is one of the attorneys of the claimant named in the foregoing amended petition; that no assignment or transfer of said claim or any part thereof, or interest therein has been made; and that the claimant is rightfully and justly entitled to the full amount named and stated in the said petition, after allowing all just credits and set-offs, and that he believes the facts stated in the amended petition to be true.

J. G. CARLISLE.

Subscribed and sworn to before me this thirteenth day of November, 1900.

[SEAL.] GEORGE W. TAYLOR,
Notary Public.

SCHEDULE A.

Declaration number.	Date.	Where from.	Duties paid.
82	August 22, 1898	New York	$6,365.73
93	" " "	" "	162.34
158	Sept. 27, "	" "	487.81
191	Oct. 14, "	" "	4,230.46
217	" 27, "	" "	.42
231	" " "	" "	38.42
231	" 28, "	" "	150.17
445	Nov. 10, "	" "	2,302.39
	" 12, "	" "	13.57
611	Dec. 2, "	" "	11.19
	" 7, "	" "	4,154.22
674	" 15, "	" "	1,819.04
	" 17, "	" "	95.29
702	" " "	" "	.50
	Jan. 4, 1899	" "	2,139.28
	" 25, "	" "	11.17
288	Feb. 10, "	" "	14.00
325	" " "	" "	3.72
322	" 13, "	" "	2,028.26
399	" 15, "	" "	1.21
359	" 16, "	" "	564.26
451	" 17, "	" "	223.67
445	" 18, "	" "	223.67
502	March 6, "	" "	911.12
555	" " "	" "	70.14
681	" 18, "	" "	223.67
723	" 21, "	" "	612.90
102	" 24, "	" "	71.10
902	" 28, "	Baltimore	94.90
908	April 5, "	New York	229.70
901	" " "	" "	36.46
957	" " "	" "	10.16
940	" 11, "	" "	21.96
1001	" 17, "	Philadelphia	107.29
1010	" 20, "	New York	17.46
1029	" 20, "	" "	21.61
1139	" 24, "	" "	134.40
1209	" 26, "	" "	37.54
1200	" 27, "	" "	2,519.23
1301	May 10, "	" "	59.86
1362	" 12, "	" "	8.50
1378	" 16, "	" "	3.00
1455	" 19, "	" "	2.95
1450	" " "	" "	24.24
1446	" 20, "	" "	233.11
1744	June 1, 1899	" "	40.13
1697	" 5, "	" "	712.89
1729	" 7, "	" "	21.59
1767	" " "	" "	57.56
1938	" 24, "	" "	59.59
2005	" 29, "	" "	1,099.73
2086	July 1, "	" "	15.91
2193	" 11, "	" "	1,176.98
2271	" 13, "	" "	32.78
2464	Aug. 1, "	" "	32.00
2661	" 12, "	" "	3,320.70
2752	" 26, "	" "	9.08
2756	" " "	" "	20.28
2808	" " "	" "	465.54
2321	" 30, "	" "	11.68
2519	" 31, "	" "	52.77
2986	Sept. 14, "	" "	.26
2990	" 15, "	" "	158.57
2971	" " "	" "	867.11
3063	" 20, "	" "	916.55
3068	" 21, "	" "	18.79
3203	" 29, "	" "	275.14
3279	Oct. 9, "	" "	776.00
3304	" " "	" "	20.10
3334	" 13 "	" "	47.50
3343	" " "	" "	5.78
3333	" " "	" "	6.38
3332	" " "	" "	71.95
3644	Nov. 7, "	" "	76.38
3640	" " "	" "	1,314.50
3790	" 29, "	" "	351.63
3867	Dec. 5, "	" "	.48
	Total		51,530.65

CARLOS ARMSTRONG.

II.—*Demurrer to the petition. Filed December 1, 1900.*

Now comes the defendants, by their Attorney-General, and demur to the petition in this cause on the following grounds:

1st. That the court has not jurisdiction to try the cause of action set forth in the petition.

2nd. That the petition does not allege facts sufficient to constitute a cause of action.

L. A. PRADT,
Assistant Attorney-General.

III.—*Order sustaining demurrer and dismissing petition.*

CARLOS ARMSTRONG *vs.* UNITED STATES. } No. 21791.

At a Court of Claims held in the city of Washington, on the 10th day of December, A. D. 1900, it was ordered and adjudged that the defendants' demurrer to the petition in this case be sustained upon the ground that the said petition does not allege facts sufficient to constitute a cause of action, and it was ordered, adjudged, and decreed that the petition of the claimant, Carlos Armstrong, be dismissed.

BY THE COURT.

IV.—*Application for and allowance of appeal.*

CARLOS ARMSTRONG *vs.* UNITED STATES. } No. 21791.

Comes now the petitioner, by John C. Chaney, his attorney herein, and moves the court for an appeal to the Supreme Court of the United States from the judgment of this court sustaining the demurrer of the defendants to the petition in said cause on the 10th day of December, A. D. 1900, and dismissing the petition.

CARLOS ARMSTRONG, *petitioner.*
By JOHN C. CHANEY, *his attorney.*

Filed December 11, 1900.

DECEMBER 11, 1900.

Ordered that the foregoing application for allowance of appeal be allowed as prayed for.

BY THE COURT.

In the Court of Claims.

CARLOS ARMSTRONG *vs.* UNITED STATES. } No. 21791.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of pleadings in the above-entitled cause of the judgment of the court sustaining the

demurrer of the defendants and dismissing the petition of the application of the claimant for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand
[Seal. Court of Claims.] and affixed the seal of said Court of Claims this 15th day of December, A. D. 190–.

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

(Endorsed on cover:) File No., 17994. Court of Claims. Term No., 509. Carlos Armstrong, appellant, *vs.* The United States. Filed December 15th, 1900.